

1 SHANNON L. GUSTAFSON (SBN #228856)

2 Sgustafson@lynberg.com

3 AMY R. MARGOLIES (SBN #283471)

4 Amargolies@lynberg.com

5 **LYNBERG & WATKINS**

6 A Professional Corporation

7 1100 W. Town & Country Road, Suite #1450

8 Orange, California 92868

9 (714) 937-1010 Telephone

10 (714) 937-1003 Facsimile

11 Attorneys for Defendant, COUNTY OF SAN BERNARDINO,
12 ROBERT VACCARI, and JAKE ADAMS

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA**

15 L.C., a minor by and through her
16 guardian *ad litem* Maria Cadena,
17 individually and as successor-in-interest
18 to Hector Puga; I.H., a minor by and
19 through his guardian *ad litem* Jasmine
20 Hernandez, individually and as
21 successor-in-interest to Hector Puga;
22 A.L., a minor by and through her
23 guardian *ad litem* Lydia Lopez,
24 individually and as successor-in-interest
25 to Hector Puga; and ANTONIA
26 SALAS UBALDO, individually,

27 Plaintiffs,

28 vs.

29 STATE OF CALIFORNIA; COUNTY
30 OF SAN BERNARDINO; S.S.C., a
31 nominal defendant; ISIAH KEE;
32 MICHAEL BLACKWOOD;
33 BERNARDO RUBALCAVA;
34 ROBERT VACCARI; JAKE ADAMS;
35 and DOES 6-10, inclusive,

36 Defendants.

CASE NO. 5:22-cv-00949-KK-(SHKx)

*Assigned for All Purposes to:
Hon. Kenly K. Kato – Courtroom 1*

**SECOND STIPULATION TO
MODIFY SCHEDULING ORDER**

Trial Date: 01/13/2025

Complaint filed: 06/07/2022

Under Federal Rule of Civil Procedure 16(b)(4) and Local Rules 7-1 and 16-14, Plaintiffs L.C., a minor by and through her guardian *ad litem* Maria Cadena; I.H., a minor by and through his guardian *ad litem* Jasmine Hernandez; A.L., a minor by and through her guardian *ad litem* Lydia Lopez; and Antonia Salas Ubaldo (“Plaintiffs”) and Defendants State of California, by and through the California Highway Patrol, Michael Blackwood, Isaiah Kee, Bernardo Rubalcava (“State Defendants”), County of San Bernardino, Robert Vaccari, and Jake Adams (“County Defendants”) (collectively “Defendants”), stipulate for the purpose of jointly requesting that the honorable Court modify the Scheduling Order issued in this action. The parties seek to continue all the deadlines, including trial, by seven months to allow the parties time to complete fact and expert discovery, which in turn will affect the remaining deadlines.

When an act must be done within a specified time, the court may, for good cause, extend the time with or without motion or notice if the court acts, or if a request is made, before the original time expires. Fed. R. Civ. P. 6(b)(1)(A). A scheduling order may be modified only upon a showing of good cause and by leave of Court. *Id.* 16(b)(4); *see, e.g., Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (describing the factors a court should consider in ruling on such a motion). In considering whether a party moving for a schedule modification has good cause, the Court primarily focuses on the diligence of the party seeking the modification. *Johnson*, 975 F.2d at 609 (citing Fed. R. Civ. P. 16 advisory committee’s notes of 1983 amendment). “The district court may modify the pretrial schedule ‘if it cannot reasonably be met despite the diligence of the party seeking the amendment.’” *Id.* (quoting Fed. R. Civ. P. 16 advisory committee notes of 1983 amendment). Good cause exists to modify the Scheduling Order because, despite the parties’ diligent efforts, they will be unable to complete discovery by the current deadline.

- 1 1. Plaintiffs filed their Complaint on June 7, 2022. (Dkt. No. 1).
- 2 2. The parties filed their Joint Rule 16(f) Report on February 13, 2023.
- 3 (Dkt. No. 49).
- 4 3. On March 8, 2023, the Court issued a Civil Trial Scheduling Order.
- 5 (Dkt. No. 57).
- 6 4. On May 12, 2023, Plaintiffs filed a Third Amended Complaint, the
- 7 operative complaint, and the respective Defendants filed their Answers in June
- 8 2023. (Dkt. Nos. 68, 70, and 72).
- 9 5. On November 20, 2023, by Order of the Chief Judge, the instant matter
- 10 was transferred from the calendar of Judge Jesus G. Bernal to the calendar of Judge
- 11 Kenly Kiya Kato. (Dkt. No. 75).
- 12 6. On December 7, 2023, the parties filed their Joint Case Management
- 13 Statement. (Dkt. No. 78).
- 14 7. On December 11, 2023, despite the parties' diligent efforts in
- 15 exchanging discovery, the parties filed a stipulation to modify the existing
- 16 scheduling order due to issues relating to the scheduling of party depositions, an
- 17 unforeseen loss of family for one of the lead counsels, as well as an anticipated
- 18 Motion to Consolidate cases regarding the related (5:23-cv-00257-KK-SHK,
- 19 Jonathan Wayne Botten Sr. et al. v. State of California et al. ("Botten") matter. (Dkt.
- 20 No. 79).
- 21 8. On December 11, 2023, the Court granted the parties' stipulation and
- 22 issued an amended Civil Trial Scheduling Order. This was the parties' first request
- 23 for an extension of time. (Dkt. No. 80).
- 24 9. On April 17, 2024, the Court ordered that the instant Puga matter and
- 25 the related Botten matter be consolidated for the limited purpose of discovery. (Dkt.
- 26 No. 82). However, no dates and deadlines were changed in either case.
- 27
- 28

1 10. The parties continue to diligently conduct written discovery. The
2 parties have propounded and responded to multiple written discovery requests. The
3 parties had also previously agreed to schedule the depositions of Defendants Isaiah
4 Kee, Michael Blackwood, Bernardo Rubalcava, Robert Vaccari, and Jake Adams
5 (“Defendant Officers”) for February 2024.

6 11. On February 5, 2024, Defense Counsel for County Defendants were
7 advised that the District Attorney’s Office was still investigating the underlying
8 incident and had not yet completed their review and therefore was not yet prepared
9 to issue a public determination. Because all individual defendants in this case were
10 still pending resolution on the criminal matter, Defense counsels requested and
11 Plaintiffs agreed, that it would be in the best interest of all parties to allow the DA to
12 conclude its investigation and release its public issuing decision on the matter before
13 re-noticing the depositions of the defendant officers to preserve their Fifth
14 Amendment rights. We were advised to follow up in two months.

15 12. On April 29, 2024, Defense Counsel for County Defendants were
16 advised by the DA’s Office that the criminal investigation review and determination
17 was being finalized for final review and that an issuing decision should be made
18 public in approximately six weeks (mid-June 2024).

19 13. Without the depositions of the Defendant Officers, the parties’ retained
20 experts cannot provide full and complete opinions, such that the parties will not be
21 prepared to disclose expert witnesses by the current deadline.

22 14. The State Defendants request that the deadline to complete mediation
23 occur after dispositive motions are resolved. State Defendants believe they have
24 meritorious grounds to move for summary judgment and are unlikely to offer any
25 substantial amount of money to resolve this matter before their intended dispositive
26 motion is resolved. Requiring the parties to engage in mediation beforehand will be
27 unproductive and a waste of time and resources. The State Defendants will be in a
28

1 better position to engage in realistic and serious settlement discussions if this case
2 survives summary judgment.

3 15. The parties agree that it is in the best interest of all parties to continue
4 all case management dates to allow the parties additional time to complete
5 discovery, conduct expert discovery, and adequately prepare for trial. The parties
6 further agree that given Plaintiffs' previous efforts to secure dates for the
7 depositions of the individual defendant officers, these depositions will proceed
8 before any other witness or party depositions.

9 16. This Stipulation is the parties' second request to modify the Scheduling
10 Order. The Court granted the parties first request on December 11, 2023.

11 17. Accordingly, in light of the foregoing, the parties hereby stipulate that
12 good cause exists, and jointly request that the Court modify the Scheduling Order as
13 follows¹:

15 Case Management Event	Prior Date/Deadline	Proposed New Date/Deadline
16 Deadline for Initial Designation of 17 Expert Witnesses	July 29, 2024	January 20, 2025
18 Deadline for Designation of Rebuttal 19 Expert Witnesses	August 26, 2024	February 17, 2025
20 All Discovery Cut-Off (including 21 hearing of discovery motions) 22 (Thursday)	September 9, 2024	March 13, 2025
23 Dispositive Motion Hearing Cut-Off 24 (Thursday)	November 4, 2024	May 22, 2025

25
26
27 ¹ The deadlines have also been modified to adhere to this Court's most recent
28 Civil Standing Order, Order Setting Scheduling Conference, and Civil Trial Scheduling Order, issued on April 23, 2024. (Dkt. No. 83).

1 Last Day to Conduct Settlement	October 7, 2024	July 10, 2025
2 Conference		(to coincide with
3		<u>Botten</u>)
4 Final Pretrial Conference	December 16, 2024	July 31, 2025
5 (Thursday at 10:30 a.m.)		
6 (18 days before trial)		
7 Jury Trial	January 13, 2025	August 18, 2025
8 (Monday at 8:30 a.m.)		

9
10 **IT IS SO STIPULATED.**

11 DATED: May 24, 2024

LYNBERG & WATKINS
A Professional Corporation

12
13
14
15 By: /s/ Amy R. Margolies
16 **SHANNON L. GUSTAFSON**
17 **AMY R. MARGOLIES**
18 **ANITA K. CLARKE**
Attorneys for Defendant,
COUNTY OF SAN BERNARDINO
ROBERT VACCARI, and JAKE ADAMS

19
20 DATED: May 24, 2024

LAW OFFICES OF DALE K. GALIPO

21
22
23 By /s/ Hang D. Le
24 **Dale K. Galipo**
25 **Hang D. Le**
Attorneys for Plaintiffs

26
27 ///

1 DATED: May 24, 2024

ROB BONTA
Attorney General of California
CHRISTINE E. GARSKE
Supervising Deputy Attorney General

2
3
4 /s/ Diana Esquivel

5 **DIANA ESQUIVEL**
Deputy Attorney General
6 *Attorneys for Defendant State of Cal., by and*
7 *through the CHP, Blackwood, Kee, and*
8 *Rubalcava*

9 *The filer, Amy R. Margolies, hereby attests that all other signatories listed,
10 and on whose behalf the filing is submitted, concur with the filing's content and
11 have authorized.

12 DATED: May 24, 2024

LYNBERG & WATKINS
A Professional Corporation

13
14
15 By: /s/ Amy R. Margolies
16 **SHANNON L. GUSTAFSON**
17 **AMY R. MARGOLIES**
18 **ANITA K. CLARKE**
Attorneys for Defendant,
COUNTY OF SAN BERNARDINO
ROBERT VACCARI, and JAKE ADAMS